

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CAUSE NO. 1:08-cv-408-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**PLAINTIFF'S REPLY TO DEFENDANT'S [185] BENCH
MEMORANDUM RE: PLAINTIFF'S REQUEST TO EXCLUDE
THE EXPERT TESTIMONY OF DRS. MASTERS AND WEISBERG**

COMES NOW the Plaintiff, by and through undersigned counsel, and files this his Reply to Defendant's [185] Bench Memorandum re: Plaintiff's Request to Exclude the Expert Testimony of Drs. Masters and Weisberg and would show unto this Honorable Court the following:

Defendant misperceives Plaintiff's objection to the testimonies of Dr. Masters and Dr. Weisberg. Plaintiff's objection based on Mississippi statutory law is not a challenge to said testimonies under *Daubert* or Fed. R. Evid. 702. Instead, to the extent said witnesses intend to provide forensic engineering testimony, testimony relating to the cause of failure of Mr. Bossier's home, or a critique of the testimony of Mr. Ted Biddy, said witnesses are not competent to do so.

In this regard, Rule 601, Fed. R. Evid., provides as follows:

Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

Here, there can be no question but that State law supplies the rule of decision. Moreover, State law clearly provides that only engineers licensed in Mississippi may provide engineering testimony. Engineering testimony is defined as including the types of failure analyses and criticisms of Mr. Biddy as are being offered by Masters and Weisberg. Accordingly, the experts are not competent to testify to those matters. *See, Ralph v. Nagy*, 749 F.Supp. 169, 173 (M.D. Tenn. 1990).

There is nothing unreasonably burdensome about the application of the State law by this Court. There are multiple individuals who could have been hired by State Farm to provide opinion testimony relating to the failure of Mr. Bossier's home yet it failed to do so.

Neither Masters nor Weisberg are eligible to receive the limited licensure for expert technical testimony permitted by Mississippi law. Section 4.05 requires evidence that the applicant is licensed to practice engineering in another jurisdiction and is in good standing there. Neither Weisberg nor Masters hold a professional engineering license in any jurisdiction.¹ Because neither Masters nor Weisberg are licensed professional engineers in the State of Mississippi, they are not competent to provide testimony. To the extent any such testimony bears on engineering issues, same must be disallowed under Rule 601.

¹Masters would be acting outside his intern license even in Florida since his report and testimony is not "under the responsibility, checking, and supervision" of a professional engineer.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that this Honorable Court will grant Plaintiff's Motion to Exclude the Expert Testimony of Drs. Masters and Weisberg. Plaintiff prays for any and other relief as may be deemed appropriate.

THIS the 6th day of November, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

Judy M. Guice (MSB #5057)
JUDY M. GUICE, P.A.
P. O. Box 1919
Biloxi, MS 39533-1919
Telephone: (228) 374-9787
Facsimile: (228) 374-9436

CERTIFICATE OF SERVICE

I, Judy M. Guice, counsel for Plaintiff, do hereby certify that I have this day electronically filed the foregoing with the Clerk of this Court using the ECF system which sent notification of such filing to the following:

H. Benjamin Mullen, Esquire
John A. Banahan, Esquire
Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC
P. O. Drawer 1529
Pascagoula, MS 39568

This the 6th day of November, 2009.

s/Judy M. Guice

JUDY M. GUICE (MSB #5057)